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STATEMENT OF

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on

**BILL 15-031
DISTRICT OF COLUMBIA JAIL INMATE CAP AMENDMENT ACT OF 2003**

**COMMITTEE ON THE JUDICIARY
COUNCIL OF THE DISTRICT OF COLUMBIA**

January 31, 2003

Good morning Chairperson Patterson and other members of the Committee. Thank you for the opportunity to address the Committee on the Judiciary on Bill No. 15-031, the District of Columbia Jail Inmate Cap Amendment Act of 2003.

This legislation stems, in part, from two recent homicides at the jail. No one can fail to be moved by the needless and senseless taking of a human life. Our hearts, like yours, go out to the family and friends of the slain inmates. But there is no evidence that these homicides or other assaults at the jail are attributable to overcrowding. Thus, an arbitrary cap on the population at the jail will not have an effect on reducing the probability that anyone -- inmates or staff -- will be killed or injured at the jail. It will, however, make the overall functioning of the criminal justice system

more costly and less efficient and, if it results in the release of people who should be detained or incarcerated, will increase the public safety risks in the community.

We oppose this legislation on the following grounds:

- The population cap of 1674 at the jail, which had been imposed in 1985, was lifted by Judge William B. Bryant in July 2002;¹
- There is no evidence that the jail is overcrowded;
- There is no documented correlation between jail overcrowding and violence in any event, either at the Department of Corrections or in penal facilities generally;
- The level of assaults in the jail -- either inmate on inmate or inmate on staff -- has decreased dramatically over the course of the last 14 months as the number of inmates at the jail has increased;
- People are currently housed at the jail because the Court has determined that they should be in a secure setting. The District has no other secure facility (other than CTF);
- If the imposition of an artificial cap leads to the release of persons who should be in custody, then public safety will be adversely affected;
- Reducing the authorized population at the jail would create significant problems for the rest of the criminal justice system;
- Disciplining Department of Corrections officials for exceeding the cap when they have no control over the number of people who are ordered into their custody is neither fair nor

¹ Judge Bryant has been assigned to this litigation, at least since 1975. Even before he officially lifted the cap, he permitted the jail population to exceed it. Since November 2001, when Lorton was closed, the average monthly population has been greater than 1674 every month except January 2002.

rational.

I will address these issues at somewhat greater length below. Let me preface my remarks, however, by stating that the housing of people who are accused or convicted of crimes in the District of Columbia is an important issue and one that deserves thorough and thoughtful examination. It has been raised in different contexts over the course of more than a quarter century. In the last few years, the transfer of sentenced felons to the Bureau of Prisons, closing down Lorton, escapes from halfway houses, closing down CCC#4 and the resulting elimination of 220 beds, siting of reentry halfway houses, drug treatment facilities, and community-based alternatives to incarceration have captured our attention. They are inter-related; a change in one affects the others. We would be well advised, then, to consider them of a piece and develop a long-term strategy that will accommodate our current concerns as well as our future needs. Placing an artificial cap on the jail population is not the solution.

One of the first issues that should be examined is why the average population at the jail increased from 1605 in October 2001 to 2229 in January 2003 -- an increase of about 625, or 40%.² We do not have the answer, but a number of possibilities spring to mind. In the last several years, the community has been alarmed about the pretrial release of persons charged with violent or dangerous crimes into the community or halfway houses. It also complained about the “revolving door,” which permitted persons charged with misdemeanors or less serious felonies to cycle back into the community time and time again, where they continued to engage in unlawful conduct. In response to community concerns about the safety and well-being of their neighborhoods, this

² We recognize that the population at the jail fluctuates from day to day. The figures we are using are contained in the Department of Corrections data supplied to the Committee.

Council enacted legislation that authorized the Court to order more than one 20-day extension for good cause shown in pretrial detention cases, to permit a temporary hold on persons who commit offenses while on release for misdemeanors, to facilitate the detention of persons who are deemed unlikely to abide by conditions of release, and to hold in contempt those persons who violate their conditions of release.³ We do not have statistics, but we postulate that this has had an impact on the population of the jail. The decision some years ago to close Lorton, which was accomplished on November 19, 2001, may also have had an impact, since it can no longer serve as a safety valve for the jail. The decision last October to close CCC#4 undoubtedly has had an impact as well, since at least some people whom the Court would have released to a halfway house are now detained at the jail.⁴

We understand that there are about 378 felons in the jail who are awaiting designation or transport to a federal facility and that it takes an average of 55 days for designation and another 20 for transport. We also understand that the five agencies involved in the process -- the Court, CSOSA, DOC, BOP, the Marshals Service -- are working on reducing the lag time between sentencing and departure. But while this effort could cut the number of days sentenced felons remain in the DC jail, it cannot eliminate them entirely since, under the best of circumstances, it takes time for all of the paperwork and procedures to be completed before sentenced felons can be moved.

³ The Conditions of Release Enforcement program (CORE), for example, has worked so well that it is no longer characterized as a program. Instead it is standard operating procedure.

⁴ Initiatives currently underway, such as increasing the homicide closure rate and executing outstanding warrants, if successful, will swell the ranks at the jail even more.

But the most important point for purposes of today's hearing is that the increase in the population in the jail does not mean it is overcrowded or that violence in the jail -- including the recent homicides -- is attributable to overcrowding.

The jail is not overcrowded

Overcrowding is measured by comparing the number of people in a penal facility against its rated capacity. The rated capacity of the jail is 2,424. On January 23, 2003, there were 2,229 inmates in the Central Detention Facility, almost 200 less than the rated capacity. By this measure, the D.C. Jail is not overcrowded. Not all of the beds are full; not all of the cells are full. No one is sleeping in hallways, recreation areas, or holding areas, as was the case when the cap was imposed by the District Court in 1985. Moreover, the jail's overall physical plant has improved; it is delivering health and mental health services; it has overhauled its records office; and implemented a number of other improvements. This is not to say that the jail is perfect or doesn't need continued improvement, but it reached a point where Judge Bryant concluded that the population cap was no longer warranted. This is a significant milestone in litigation that has lasted over thirty years and it cannot be underestimated.

No relationship between overcrowding and violence in any event

Although it is often thought that there is a relationship between overcrowding and violence, there is little evidence that overcrowding causes violence. Indeed, a study undertaken by an employee of the Bureau of Prisons ten years ago found no evidence of a causal connection between overcrowding and violence. See Gaes, Gerald, *Prison Crowding Research Reexamined*, *The Prison Journal*, vol. 74, No.3 at 329 (September 1994). He concluded that "data on aggregate measures of density and violence have shown that it is more likely that some factor other than crowding (but

possibly correlated with density) is associated with changes in violence.” *Id.* at 357-357. In a more recent article currently under review at a research journal, Mr. Gaes and his colleagues “found that crowding was not significant in most of the adequately specified models.”⁵

The experience of the jail itself contradicts the notion that violence accompanies an increase in population. According to data provided by the Department of Corrections, although the population at the jail has increased, incidents of violence have decreased. Between 1999 and 2002, the number of assaults by inmates on inmates decreased from 80 to 16 annually; and the number of assaults by inmates on staff decreased from 49 to 17 annually.⁶

Our office is involved in the investigation and prosecution of the two December murder cases. It would be inappropriate for me to comment other than to state what is in the public domain. In one case where there has been an arrest, an argument over a container of milk appears to have spawned the murder. In this, the murder is not dissimilar to many of the murders we have on the street over seemingly inconsequential differences. Could the same argument have arisen if the jail contained 1674 people instead of 2339? Probably it could have.

Jails and prisons, by their nature, contain a population that is more violent and dangerous than the population at large. It is often the reason people are there. While we do not minimize the necessity of reducing outbreaks of violence in penal institutions to the greatest extent humanly possible -- and would be willing partners in an effort to examine the causes of violence in the jail today -- it would be naive to assume that it can be eradicated entirely.

⁵ We would be pleased to provide a copy of these articles to the Committee.

⁶ The 2002 data do not appear to be for a full year.

Witness protection

The United States Attorney's Office, in conjunction with other agencies, operates extensive witness protection programs. They extend to people who are incarcerated as well as those who are in the community. After having the programs explained to them at length, many witnesses elect not to participate. Those heading for jail or prison believe -- rightly or wrongly -- that a request for a segregation order or protective custody labels them as a "snitch" and they believe they are in greater danger with this label than they are taking their chances in the general population. Thus, when asked whether they want protective custody or whether they have any known enemies at the jail, they frequently say "no." The potential for violence is inherent in such situations regardless of the number of persons at the jail.

Public Safety

The jail houses people who are incarcerated for different reasons -- but underlying them all, has been a determination by the Court that they are dangerous or pose a risk of flight or, following conviction or revocation of release, that their conduct merits incarceration. The people who are currently detained or incarcerated at the jail need to be in a secure detention facility. If fewer beds are available at the jail, more secure beds will have to be found elsewhere -- at a greater cost to the District and to the federal government.

Right now, the jail population is composed of:

<u>Reason for detention</u>	<u>DOC Category</u>
• Persons charged with felonies (both in District Court and Superior Court) who have been detained under D.C. Code § 23-1322 or § 23-1325 or 18 USC § 3142;	• Pretrial
• Persons charged with a misdemeanor or felony committed while on pretrial release, pre-sentence release, probation, parole, or supervised release detained under D.C. Code § 23-1322;	• Pretrial
• Persons who were released pretrial and had their release revoked under § 23-1329;	• Pretrial
• Persons awaiting placement in a pre-trial halfway house	• Pretrial
• Persons convicted and awaiting sentence (both in District Court and Superior Court);	• Pretrial
• Persons sentenced to probation with a condition of residential drug treatment that is not available;	• Sentenced felons or misdemeanants
• Sentenced felons awaiting federal designation (both federal and DC Code offenses);	• Sentenced felons
• Sentenced misdemeanants;	• Sentenced misdemeanants
• Alleged parole violators awaiting revocation hearings;	• Pretrial
• Probation and parole violators awaiting federal designation;	• Sentenced felons
• Federal program failures;	• Program failures
• Persons (as witnesses) brought to the District on a writ	• Writs/holds

The Department of Corrections breaks down the current population in the categories in the second column as follows:

Pretrial ⁷	1564	70%
Sentenced felons	378	17%
Sentenced misdemeanants	153	7%
Halfway house failures	13	1%
Writs/Holds	121	5%
	2229	100%

⁷ Pretrial includes everyone who has not been sentenced or revoked.

Releasing persons currently held at the jail is not acceptable to us, nor, we believe, to the community. Indeed, these are the very people about whom the community -- and from time to time individual Council members -- are complaining. Those who have been detained pending trial have been determined by a Court by clear and convincing evidence to be a danger, risk of flight, or unable to abide by conditions of release; those awaiting sentence are statutorily presumed to be dangerous unless the Court finds otherwise; those awaiting a residential drug treatment program are a danger to themselves or others if released without treatment; people awaiting federal designation or transport have been sentenced to a term of incarceration because the judge believes that is a fair sentence; probation and parole violators have demonstrated their inability to abide by conditions of release. While we have not examined the files of the few misdemeanants who are serving a sentence, given diversion programs now in operation and community-based sanctions for convicted misdemeanants, it is our impression that jailed misdemeanants are either multiple-repeat offenders or have committed serious assaultive or threatening crimes (domestic violence, stalking, cruelty to animals, etc.). If public safety augurs in favor of keeping the people currently in the jail in a secure facility, then what?

Burdens on the system

We could spend time, energy and money trying to find alternative secure facilities to immediately move people who are currently at the jail. We may have to do this anyway as part of a long term strategy. But creating a crisis will draw on resources that could be better spent on systemic reform. Moreover, the logistics of long-distance travel for people who have court appearances are complicated and costly, could jeopardize the prosecution of the most serious offenders, and could impinge upon the rights of defendants. The agencies which are responsible for

these matters do not have the budget or manpower to add to their current responsibilities.⁸ If overcrowding is not the cause of violence, there is no reason to act precipitously to impose a solution to a problem that does not exist.

As I mentioned earlier, we need to take a longer and more comprehensive look at the housing needs of the criminal justice system. Otherwise we will keep bumping up against situations that seem to need immediate attention -- and resolving them in ways that adversely affect other parts of the system and the ability to craft sensible long-term strategies.

Disciplining DOC officials

The second part of the bill calls for disciplining DOC officials if the cap of 1674 is exceeded for more than 30 days. If DOC were to be given additional appropriate facilities to house the number of people who need to be in secure facilities and then failed to allocate the population among those facilities to keep the population at the jail below a set number -- whether it is 1674 or 2424 -- then discipline might be appropriate. Without such facilities, it is wholly unfair.

The Department of Corrections does not control who enters the jail or who leaves it. At the front end, the Court does. The Court is upholding the statutes enacted by this Council in order to administer justice fairly and to protect society from those who have broken its covenants and who need to be segregated from the rest of us. At the back end, to the extent that prisoners are being sent to federal facilities, a combination of local and federal agencies determine how long prisoners remain at the jail after sentencing or revocation. As I noted earlier, these agencies are working on improving their efficiency in order to move people more quickly. It is not, and will never be, an

⁸ The continuing call up of reserves is reducing the staffing of many criminal justice agencies, further stretching their limited resources.

instantaneous process.

We do not think this bill should be passed at all, but if it, or a variation of it, is, then subsection 2(b) should be deleted.

Conclusion

We appreciate the Committee's desire to address violence at the jail. But this solution will not reduce violence at the jail and will cause multiple other problems. Releasing offenders is not an option. The United States Attorney's Office is not going to measure whether a person is a danger to the community or a risk of flight by the amount of space at the jail -- and we trust that judges would not either. The public -- which appears to want more enforcement, more arrests, more attention to the crime problems in their neighborhoods -- would not tolerate releasing people who should be detained.

We respectfully submit that this legislation be the impetus for a more reasoned and thoughtful discussion of the housing needs of the criminal justice system -- but that it not be passed.

I would be pleased to answer any questions you may have.